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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/598,110	06/21/2000	Terry Pullaro	PULT 9188 US	7336
1688	7590	04/18/2006	EXAMINER	
POLSTER, LIEDER, WOODRUFF & LUCCHESI 12412 POWERS COURT DRIVE SUITE 200 ST. LOUIS, MO 63131-3615			HUNTER, ALVIN A	
			ART UNIT	PAPER NUMBER
			3711	
DATE MAILED: 04/18/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/598,110

Applicant(s)

PULLARO, TERRY

Examiner

Alvin A. Hunter

Art Unit

3711

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 February 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 6 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Huffman (USPN 5215307).

Regarding claim 6, Huffman discloses a sport specific training and conditioning device for a sport using a handle implement having a grip portion wherein the device comprises a handle shaped like a grip portion of the implement wherein the handle has a first and second end and a weight on the second end of the handle. Huffman discloses the device being 15 to 30 inches in length (See Summary of the Invention). If the device has a of length 15 inches, the device would inherently have a stationary center of mass less than about 13 inches from the first end of the handle. Also, Huffman discloses that one end may have a heavier weight ^{than} ~~on~~ the other end (See Column 2, lines 43 through 50). This would vary the balance of the device such that the center of gravity is moved along the handle to that location desired by the user. Therefore, one having ordinary skill in the ^{art} ~~ad~~ would have found it obvious to have the device on any length so long as the device strengthens the user's muscles. It is also note that Huffman discussed that weight training exercise usually involve weighted implements such as weighted golf clubs in order to train the specific muscles of the user in which are used

within the specific sport (See Background of the Invention). Based on the above, Huffman naturally discloses that the device weighs more than the actual implement used in the sport.

Response to Arguments

Applicant's arguments filed 2/23/06 have been fully considered but they are not persuasive. Applicant argues that Huffman does not direct the effects of the weight and center of gravity to the forearms of the user. The examiner disagrees. The instant claim is only directed to intended use. It should also be pointed out that the language "consisting essential of" can only be defined in the context such that the invention carries out its purpose without change in which the goals cannot be attained by the modification. Hence, the term "consisting essential of" is interpreted as being "comprising." Also, applicant should note the use of the term "configured" within the instant claim. Huffman discloses a device having a handle with two ends wherein a weight is attached to a second end. Further, Huffman even notes that the device strengthens the specific muscles used within the specific sport. It is clear that Huffman is configured to direct the effects of the weight and center of gravity to the forearms of the user. Even more so than what is stated above, Huffman notes that the weights on each end of the handle do not have to be the same weight. Clearly this arrangement would almost serve as having no weight on one of the ends of the device. For these reasons, the above rejection has been furnished.

Conclusion

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alvin A. Hunter whose telephone number is (571) 272-4411. The examiner can normally be reached on Monday through Friday from 7:30AM to 4:00PM Eastern Time.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene Kim, can be reached on 571-272-4463. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

AAH

Alvin A. Hunter, Jr.



EUGENE KIM
SUPERVISORY PATENT EXAMINER